

FILED '08 MAR 04 12:50 USDC-ORE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Scott Dahlen,	)	
	)	
Plaintiff,	)	Civ. No. 08-06032-TC
	)	
vs.	)	
	)	
	)	FINDINGS AND RECOMMENDATION
	)	
City of Bend,	)	
	)	
Defendant.	)	
	)	

Coffin, Magistrate Judge:

Before the court is plaintiff's Motion to Remand to State Court (#3). In this action, originally removed from Deschutes County Court, plaintiff brought takings claims under the Oregon and federal constitutions. He asserts that the City of Bend has prevented him from obtaining any economic benefit from a tax lot in which plaintiff had acquired an interest.

Defendant removed the case to federal court. Plaintiff now moves to remand the case to state court on the basis that the federal takings claim is unripe because plaintiff has not exhausted all state remedies. See Williamson Planning Comm'n v. Hamilton Bank, 473 U.S. 172 (1985) (describing exhaustion

1 Findings and Recommendation

1 requirement). The court finds, based on the affidavit of  
2 plaintiff's counsel, that the federal takings claim is  
3 unexhausted, and remand to state court is appropriate. For this  
4 reason, I recommend that plaintiff's Motion to Remand to State  
5 Court (#3) should be granted.<sup>1</sup>

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7 Dated this 4<sup>th</sup> day of March, 2008.

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11 THOMAS M. COFFIN  
12 United States Magistrate Judge  
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26 <sup>1</sup>Although not yet considered by the Ninth Circuit, several  
27 circuits have held that a motion to remand is to be treated as a  
28 dispositive motion for purposes of law governing the magistrate's  
authority. On this basis, I have filed this Findings and  
Recommendation on this motion, rather than an order. See In re U.S.  
Healthcare, 159 F.3d 142 (3d Cir. 1998); Vogel v. U.S. Office Prods.  
Co., 258 F.3d 509 (6th Cir., 2001); First Union Mortgage Corp. v.  
Smith, 229 F.3d 992 (10th Cir. 2000).